who are from outside the community and likely to be absentee operators? It just doesn't make much sense.

In addition, the Commission states,[21] "we expect the nature of the service provided by the two smaller class (sic) of stations would attract primarily local or nearby residents in any event." Therefore, the Commission seems to want and desire, at least for LPFM stations of 100 watts or less, local residency as a good thing. Yet the Commission is reluctant to mandate local residency. Commission expectations have proven wrong before, and this is one of those loopholes that we fear could become a ravine. We see little reason why the Commission should not simply mandate local residency if that is seen as a positive.

Frankly, it is the experience with national non-commercial religious broadcast organizations which gives us pause. We have absolutely no problem with local churches and other local religious organizations becoming LPFM licensees. In fact we support and encourage such a result. However, during the last decade a number of national non-commercial religious broadcasters have taken advantage of a loophole in the regulations for FM translator licensing to establish huge networks of stations rebroadcasting the same, identical national programming, with no local content. These translators have already taken much of the spectrum that might otherwise be available for local LPFM's. It is not the religious nature of the programming we object to, it is the absolute lack of localism. We fear that given the way the FCC is structuring the current LPFM proposal, large chunks of the new LPFM service might end up being used in the same manner. This would be a disaster, given the unique potential for LOCAL programming that LPFM promises.

The failure of the FCC to require local operators and local programming, and its allowance of multiple operations may well lead to a similar perversion of the purpose and intent of LPFM and would be, we feel, an absolute disaster. The full-power broadcasters have already largely abandoned local service. LPFM is the last great opportunity to bring back service truly designed for and focused on a local community. A local residency requirement is one of the elements necessary to ensure that this opportunity is not squandered.

3. Integration of "Ownership" Into Management:

For the same reasons as stated above regarding local "ownership", it would make sense that operators be required to be actively involved in the management of the station.. Allowing absentee operators simply does not make sense in the context of LPFM. Again, with the competition for LPFM likely to be heavy why not reduce the number of potential applicants by restricting eligibility to those who really want to communicate via radio? Why should one who desires to be an absentee operator get equal treatment with one who truly wants to personally serve their community? Such a restriction is eminently reasonable, will benefit the community, and will serve to pare down the number of applicants to those who most urgently want a local community station, as opposed to those who are schemers and speculators.

[21] NPRM Paragraph 61.

The Commission asks whether the decision in *Bechtel vs. FCC* would preclude an integration rule.[22] We do not think that the decision in *Bechtel vs. FCC* precludes an integration rule. In the *Bechtel* cases, the D.C. Circuit court ruled that the FCC's integration preference[23] was enforced in an arbitrary and capricious manner. For instance, the policy behind integrated station "ownership" was significantly mooted by the fact that such a licensee could easily sell the station to a subsequent purchaser who had little day-to-day oversight over station operations. Because a significant public policy is advanced if the operator of an LPFM station is a local resident (i.e., increased diversity of voices and local content), we believe the FCC can establish an integration rule for LPFM provided that such a rule is enforced in a consistent manner. We strongly believe that implementation of the proposals set forth in the CDC's comments would ensure such a result.

XIV. Local Programming:

We are extremely disappointed in the Commission's proposal to not impose a local programming requirement. We consider it a major mistake which could undermine the entire LPFM service. The whole point of LPFM is localism-- service to a particular community, designed by and for that community. Frankly, if local programming is not a requirement of the new LPFM service, than we would rather see no service at all.

The Commission states that, "based on our expectation of the nature of the licensees that will populate LPFM... we expect that a significant amount of programming will be locally produced as a matter of course."[24] This would not be the first time that the FCC has had such "expectations" and been wrong.[25] It does not really matter what the current potential applicants for LPFM might be planning. What matters is how this new service will develop ten and twenty years down the road-- will it still be a model of local programming, embedded in and responsive to its community? Or will it be just more generic, bland pap piped in from a "professional" studio somewhere in L.A. or New York. If its the second, then the entire service in just not worth the effort and we will withdraw our support.

If the Commission does not require a significant local programming component, then we fear the following result. Those who have no interest in local programming and service to a particular community, but rather in empire building, will be attracted to LPFM as applicants. They will flood the applicant pool, either now or in the future, and push aside those who have fought for many years for LPFM as a local, community service. Additionally, even some of those who sincerely wish to provide local programming will succumb to the inevitable financial pressures and start down the slippery slope of utilizing a variety of network and syndicated programming.

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[22] NPRM Paragraph 62. Bechtel v. F.C.C., 957 F.2d 873 (D.C. Cir. 1992), Bechtel v. F.C.C. 10 F.3d 975 (D.C. Cir. 1993).

[23] "Integration" here refers to the FCC's previous preference for station owners to also be part of the full-time on-premise station management.

[24] NPRM Paragraph 68.

[25] Consider the Prime Time Access Rules, for example.

Let's face it: network and syndicated programming is usually just a whole lot easier to do and a whole lot cheaper. Without a requirement to keep programming local, even the most dedicated community activist may, five or ten years down the road, be subjected to a mighty temptation to take the easy way.

The entire purpose of LPFM is to give the community a voice, put local people on the air, broadcast local city council meetings, high school football games, local dramatic productions, etc. Those who are not unconditionally dedicated to doing this should simply not be applicants for LPFM. Considering the crush of applications that is expected, why would the FCC wish to open the process to those who are not dedicated to community service? By limiting LPFM to local service, it will reduce the number of applicants and limit the applicants to those who are dedicated to community-based programming. We can see no rational reason for the FCC wishing any other result.

We do not propose that programming be 100% local origination. We propose that programming be a minimum of 75% locally originated.[26] We not only recognize the value of networking and cooperation among LPFM stations to produce regional and national programming, but strongly encourage it. However, such programming should not dominate any LPFM station and should be kept to below 25%.

XV. Transferability

We absolutely oppose the Commission's proposal to allow for transferability of LPFM licenses and construction permits.[27] We refer to Principle 1, above, that all decisions should be made to encourage those who wish to communicate, and discourage those who wish to profit. Those who wish to communicate will not care if licenses are transferable-- at that point where they cease to desire to communicate they will be happy to vacate their channel to become available again for others. Only those who seek to profit will be concerned that transferability be allowed.

Allowing transferability of licenses will only encourage speculators to apply for licenses or to purchase them for trading purposes. Speculators do not invest in long term development, do not get to know their community, do not see beyond the next year or two. Allowing speculation, especially in community LPFM stations, is simply not in the public interest. A licensee who ceases to utilize their channel should simply allow that portion of spectrum to return to the general pool of available channels.[28]

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[26] We consider pre-recorded music that is individually selected and aired locally to be "local" origination.

[27] NPRM Paragraph 86.

[28] As stated above, in footnote 6, we do not object to completely formal transfers such as from a partnership to a corporation where control remains the same, or to an heir of a licensee.

XVI. Applications and Renewals:

We have a somewhat different approach to the application and renewal process than that outlined by the Commission. We would prefer to see a system that more closely resembles a "registration" system than a licensing system. The system would be designed, to the maximum extent possible, so that conflicts among applicants could be resolved through local, voluntary agreements. Conflict resolution by the FCC would be only a last resort. This approach will be applied below to each element of the application and renewal procedure.

In addition, we believe the LPFM service should be entirely non-commercial. Therefore, our comments in this section are addressed primarily toward non-commercial applicants. As the Commission notes,[29] "the Balanced Budget Act of 1997 appears to mandate auctions... if mutually exclusive applications for commercial LPFM facilities were filed." Therefore, even if the Commission were to allow for commercial licensees, the application procedure would appear to be, necessarily, quite different than that for non-commercial licensees.

A. Electronic Filing:

In general, we agree with the FCC's proposal that electronic filing be mandatory.[30] This will certainly lead to a more prompt and efficient processing of applications. We believe that, at this time, nearly all potential applicants have electronic filing available to them. Further, that availability is constantly growing so that by the time the FCC is actually ready to receive applications it should be even more widespread.

However, should even a fairly small number of commenters in this proceeding reasonably indicate that electronic filing is not readily available to them or would add an unfair burden, then we would support an alternative method of filing, such as filing the application via computer disk.

B. Filing Windows:

We agree with the FCC proposal that there should be fairly short filing windows. We believe that a filing window of about 7 business days is reasonable, assuming that sufficient advance notice will be given.

1. No First Come, First Served: However, we strongly oppose any system which utilizes a first-come, first-served approach. This will serve no real purpose, and will simply lead to a potential disaster when every applicant attempts to file simultaneously during the first minute that the filing window is open. How can it possibly benefit the public to award a license to the applicant who files at 9:01 AM as opposed to the applicant who files at 9:06 A.M. Such an approach seems

[29] NPRM Paragraphs 103 ff.

[30] NPRM Paragraph 91.

inequitable, irrational, and unrelated to any public interest purpose or goals, except for a sort of robotic efficiency.

The Commission might wish to consider having these filing windows roll-out over the United States over a period of a few months so that Commission staff can spread the administrative burden and the system will not be overwhelmed.[31] At a reasonable time after the first round of applications have been completed, a second round might be initiated. After that, applicants could simply file for any channels still available.

2. Amending Applications to Remove Conflicts:

It would be useful if applicants can rapidly receive information that their proposal is mutually exclusive with another proposal, but only if that information is sufficient to allow the applicant to amend their application to remove the conflict.[32] If the information is not sufficient to allow for a useful amendment, or if there is no opportunity to amend, then such information serves no real purpose.

The system should be set up so that applicants can submit an amended application in order to remove the conflict. In fact, there might be an additional period of one or two days to allow for such amendments. However, the amendment should only be processed if it actually places the applicant in a non-conflicted situation. If the amendment would simply create a conflict with yet another applicant, then it should not be processed and the original application should remain in place.

3. No Information to Enable Cross-Filing:

Any information that is given to applicants during an open filing window should not allow them to then design an application which purposefully conflicts with another applicant. This is sometimes called "cross-filing" or "filing on top" of an applicant. It has been done, sometimes extensively, in other FCC proceedings in the past, and is not in the public interest in the context of LPFM.

Rather each LPFM applicant should design the station that best serves the audience they wish to reach. Such applications should be designed with no reference at all to other applicants, unless such cooperation is mutual and voluntary.

Otherwise, we fear that some applicants will purposefully wait to see what the plans of the initial applicants are. They may then design their applications to be slightly more in line with some FCC criterion, and then file on top of the earlier applicant in order to eliminate them as a competitor. Such a situation would be inequitable and would not serve the public interest. Therefore, we support a system which gives applicants enough information to allow them to remove conflicts by filing an amended application, but does not give them information which

[31] NPRM Paragraph 97.

[32] NPRM Paragraph 95.

would allow them to design an application that would be intended specifically to compete with another applicant.

4. Impose Extensive Public Interest Qualifications to Reduce the Number of Initial Applicants:

The first thing the Commission should do to make the application process simpler is to impose reasonable public interest requirements on applicants to initially reduce the number of applicants. To the extent that the FCC's proposals do not do this, they appear to us to be irrational and contrary to the FCC's explicitly stated goal of reducing the potential flood of applicants.

In Paragraph 40 the Commission states that it, "expect[s] to receive a very large volume of applications." The Commission repeats this statement in Paragraph 91, and notes the difficulty this poses. This concern is then mentioned numerous times in the following paragraphs. In Paragraph 97 the Commission states that, "We are concerned... about...a flood of applications in a short period that would be so great as to overwhelm any filing system we might be reasonably able to devise."

Further, in Paragraph 106, the Commission notes its statutory obligation, under Section 309(j)(6)(E) of the Communications Act, "in the public interest, to continue to use engineering solutions, *threshold qualifications*, service regulations, *and other means* in order to avoid mutual exclusivity in application and licensing proceedings" (emphases added).

Yet, despite this serious concern and statutory obligations, the Commission has refused to put in place certain fairly obvious limitations on applicants, limitations all of which would serve the public interest and which would likely significantly reduce the expected "flood" of applicants. We are just baffled by the Commission's illogical position in this area.

We will briefly repeat the restrictions we have proposed above:

1. Non-commercial (including no "underwriting" announcements),
2. License (and construction permit) non-transferable.
3. Local programming requirement: 75% local programming.
4. Operator requirements:
   a. One to an operator (local and national),
   b. Local residency and integration requirement,
   c. No operators with full-power radio license (local and national)
   d. No operators with full- or low-power TV license (local and national)
   e. No operators with ownership interest in other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

All of these requirements are in the public interest. We are certain that, even with these requirements, there will be an abundance of applications. Yet these requirements will significantly reduce the number of applicants, thereby easing the application process. In addition, these requirements will fulfill both Principals 1 and 2, above. They will encourage those who are most interested in actual communication, in actually serving their community. They will discourage those interested in profit-making or empire-building. And they will create the maximum diversity of operators, views, and voices. For the FCC to fail to mandate these requirements is for the FCC to invite the very administrative nightmare it claims it wishes to avoid.

5. Local Self-Regulation: The Core of the Application and Regulatory Process

After a window has closed, those applications that are not mutually exclusive with others should be considered "registered". As long as they construct the station within the time limit, they are ready to go on the air.

Where there is mutual exclusivity, the applicants should all be notified of that fact, notified of who they are in conflict with, and given as much information as possible as to exactly wherein the conflict lies. At that point, such applicants should be given three months to negotiate a settlement.[33] An additional three month extension may be granted if the majority of applicants in a group request such an extension.

The FCC should encourage creative solutions and provide assistance wherever feasible and possible. FCC field offices might be enlisted to provide engineering or technical advice. Solutions might include time-sharing, reduction of power at certain times, relocation of transmitter sites, alterations in transmitter elevation, directionalization of signal, etc. More sophisticated modeling than the initial distance separations should be allowed in order to show that conflicts have been resolved satisfactorily.

We suggest that the Commission take the following steps to encourage local and voluntary resolution. Note that we also propose that applicants who follow these steps will eventually be given a priority status if the local negotiations should fail and the next step of the application process must be resorted to.

a. Encourage the Creation of Voluntary, Local Self-Regulatory Organizations

Applicants who are mutually exclusive should be encouraged to voluntarily form a local self-regulating organization (LSRO) which will assist with resolution of the conflicting applications and will serve as an ongoing self-regulatory body. Even applicants who are not mutually exclusive should be urged to join such an organization, since the organization will provide on going self-regulatory functions. As we describe below, such a non-mutually exclusive applicant might benefit from such membership at renewal time.

[33] Such settlements shall NOT include financial payments or other similar exchange of valuable consideration.

Such organizations should be encouraged to initiate processes which will lead to resolution of application conflicts. The organization might initiate mediation or binding arbitration as a means of resolving conflicts. An established local organization might be recruited to be the coordinating body for the LSRO. Public libraries or cable television public access organizations might be the perfect institutions to be at the core of an LSRO. A library might receive an offer of programming time on the member stations in return for its efforts. We also suggest that the FCC might make a small stipend available to libraries that undertake such a function to defray costs and staff salaries. Since the library will be taking on administrative work that the FCC might otherwise do, such a stipend would not be unreasonable. The library staff and board might be requested to assist in mediating or arbitrating conflicts.

In some situations, especially where there is extremely heavy competition for very limited LPFM channel space, a solution might involve creation of a "public access" facility. The library could become the official applicant and run a public access LPFM, based on the principles developed by cable television public access channels. The mutually-exclusive applicants could be guaranteed some priority in public access assignments during an initial period, such as the first five years, in return for voluntarily assigning their application to the library.

These are just a few suggestions as to how an LSRO might organize to resolve conflicts. Each LSRO will be left to determine its own constitution and procedures. But the FCC should grant the LSROs maximum flexibility to resolve issues locally and should support them with whatever information and assistance is reasonably needed.

b. Encourage Cooperation with Local Self-Regulatory Organizations.

Once a majority of mutually-exclusive applicants in any given region have agreed to form an LSRO, they will so notify the FCC, which will recognize the status of that LSRO. Other mutually-exclusive applicants may opt not to cooperate with the LSRO. However, should there be a failure to resolve all issues voluntarily and locally, those applicants who have worked with the LSRO should receive a substantial preference if the FCC must intervene to resolve issues. Whether such intervention requires a weighted lottery, a point system determination, or some other procedure, applicants who have participated at the local level in good faith should receive a strong preference. Such a preference will encourage applicants to participate at the local level, and, therefore, avoid situations where the FCC must intervene.

c. Ongoing Local Self-Regulation:

The LSRO's role will not end with the application process, but will be ongoing. Any allegations of interference from any user of the electromagnetic spectrum will first be referred to the LSRO for resolution. Only where the LSRO is unable to resolve the issue voluntarily will the FCC be involved.

In addition, the LSRO will play a significant role at renewal time. We discuss this further below.

d. Funding of LSRO

The LSRO, once established, should be allowed to institute mandatory dues from its members to defray expenses, as long as those dues are fairly minimal such as $100 annually. Such funds will, at least, provide some minimal operating expenses. In addition, we would urge the FCC to contribute a small stipend to each LSRO, especially if it has integrated a local institution, such as a public library, at its core coordinating organization. This is justified since the LSRO will be undertaking tasks that would otherwise fall to the FCC. However, we hope and believe that the LSROs, as models of local, self-regulation might be attractive as grantees to private and community foundations and other funders. In particular, the arbitration and mediation services provided might be an attractive program for private funders, and possibly even qualify for some governmental grants. The FCC should do everything possible to encourage such funding. The Commission might even request of Congress legislation, such as tax deductions and funding opportunities, that would assist in fundraising for LSROs.

6. Application Process in Lieu of Voluntary, Local Resolution:

If, for whatever reason, application conflicts cannot be resolved voluntarily at the local level, then the decision must fall to the Commission.

a. Mandated Resolution:

Prior to resorting to a lottery, point system determination, or other such method to resolve conflicts, the Commission has the authority to mandate a resolution. Particularly where there are a fairly small number of mutually-exclusive applications, such a solution would appear to be quite reasonable.

In particular the Commission could mandate time-sharing, lowering of power levels (either in general or at certain times of day), lowering of transmitter height, moving of transmitter to a different location, etc. Some of these methods, particularly time-sharing and power level adjustment, are well established as within the Commission's authority.

We realize that time-sharing has, generally, not been favored by the Commission in resolving conflicts among full-power stations.[34] However, we feel that time-sharing is much more appropriate, and even beneficial, among LPFM stations. Many LPFM stations will be operated by very small organizations which would be hard-pressed to broadcast 24 hours a day, seven days a week. They are likely to be able to provide a higher quality service if they can focus on a limited amount of program production.

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[34] See FCC 98-269, Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking (MM Docket No. 95-31), Adopted October 7, 1998, at Paragraph 26.

Similarly, some stations may be operated by public schools, libraries, churches, or other such organizations who would mostly be interested in operating during the daytime and only on certain days of the week, such as Monday through Friday only, or Saturday and Sunday only. Others may be primarily operated by people who work on weekdays and would, therefore, wish to operate only at night or on weekends. Time-sharing and other flexible arrangements would seem to perfectly meet these needs. It would maximize the number of operators and voices while utilizing the limited LPFM spectrum most efficiently. In addition, we do not think it would cause the same level of audience confusion that time-sharing in full-power radio might lead to. There may be some initial confusion at first, but because of the very local nature of LPFM we believe that listeners would quickly learn and understand that a variety of stations were sharing the limited local LPFM channels. They would soon know when the stations they wanted to listen to were broadcasting. The initiation of this new service would likely lead to local newspaper articles and other media coverage which would inform radio listeners of the situation.

b. Last Resort Resolution:

In the event that all of the above methods fail to provide a resolution of application conflicts, then the Commission must resort to a method such as a lottery or point system determination. We hope and believe that such a situation will rarely occur.

In fact the FCC should institute regulations which strongly encourage early voluntary resolution. Licenses which are awarded through last resort resolution should be non-renewable. In addition, those who joined an LSRO should receive a heavy preference in the last resort resolution.

We slightly favor a weighted lottery since the results should be almost the same as a point system and yet it is far simpler to administer. We are more concerned that the point system or weighting factors are truly those which will service the public interest. Again we refer to our two guiding principles: First, encourage those who wish to communicate and serve the community, discourage those whose motive is profit-making or empire-building; second, create maximum diversity of operators, views, and voices.

Therefore, we propose that the following be the primary factors in a point system or a weighted lottery. In addition, they should be given very significant weight.

1A. The applicant pledges non-commercial service,

1B. Non-commercial service which includes a pledge of no underwriting announcements receives additional weight.

2. A pledge not to transfer the station, but rather if the applicant should cease broadcasting, to allow the channel to simply become vacant so that others can apply for its use. Some points, though less, may be given an applicant who pledges to transfer the station only for reasonable and demonstrable recovery of actual costs.

3. The applicant pledges to provide a minimum of 75% local programming,

4. The applicant pledges to operate only one LPFM station (locally and nationally)

5. The applicant is a local resident (i.e. lives within the secondary service area of the station).

6. The applicant does not have a full-power radio license (local and national)

7. The applicant does not have a full- or low-power TV license (local and national)

8. The applicant does not own other mass media such as telephone company, cable TV company, satellite broadcaster, daily newspaper, etc.

9. The applicant pledges to serve a specific and identifiable community that is otherwise unserved or underserved. We have in mind here primarily non-English language communities which do not receive adequate service in their language. However, other specific communities, such as children, the elderly, the disabled, Native Americans, etc. might also be considered.

10. The applicant joined an LSRO and acted in good faith to achieve a voluntary resolution of the mutually exclusive situation.

In addition, the following programming pledges will also receive weight in the lottery. However, in the initial application these pledges may be made conditional on the application process reaching the last resort resolution stage.

11. The applicant pledges that a minimum of 10% of music programming will be local music programming.[35]

12. The applicant pledges to carry full coverage of the local city council meeting or similar civic event (such coverage need not be live).

13. The applicant pledges to provide at least 30% of its programming in a "public access" mode.

Obviously, any of the above criteria which have already been determined as mandatory for applicants would not have to be included again in a point system or weighted lottery.

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[35] We would define local music as follows. Local music is:

A. A live or taped broadcast of a performance that occurred in the same state as the LPFM station,

B. A commercial recording where either a. at least one of the primary performing musicians resides in the same state as the LPFM stations, b. at least one of the primary songwriters or composers resides in the same state as the LPFM station, c. the production company is located in the same state as the LPFM station.

However, if the Commission does not follow our recommendations that the majority of the above be mandatory, then this provides an opportunity to give credit to those who have voluntarily pledged to the above standards.

7. Renewals:

We suggest that LPFM operators must renew their registration every four years. If there have been no significant problems or complaints, registration renewal should be automatic.

All LPFMs in a given state should be required to renew within the same time period, as is now the practice for full-power stations. During that same time period, applicants for new LPFM stations that are mutually-exclusive with existing stations may apply.[36] The same process that has been outlined above will be utilized to accommodate new applicants. Some additional guidelines might be appropriate such as the following:

a. All attempts will be made to accommodate new applicants, within reason, but they may be required to settle for less time than requested,

b. A renewal preference will be given to currently operating LPFM stations to achieve some continuity. However, that preference might be lessened after a ten year period, and might be eliminated altogether after a twenty year period.

c. A renewal preference will be given to an LPFM station that has joined a LSRO.

d. Polling, a referendum or plebiscite, or some other method may be utilized to determine the level of community support for different LPFM operators. Such levels of support may be taken into account in determining whether an LPFM operator must give ground for new entrants. However, such "popularity" measures should not be dispositive or given undue weight, as a high quality service to small communities (such as foreign language communities) may have great public service value, while appealing to only a small number of people.

XVII. Radio Broadcast Auxiliary Frequencies: All LPFM stations should be permitted to seek authority to use radio broadcast auxiliary frequencies.

XVIII. Transmitter Certification:

We agree with the FCC's proposal[37] that all transmitters be certified, i.e. type-accepted, even for any 1-10 watt microradio service.

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[36] Applicants that do not pose any mutual exclusivity conflicts may apply at any time, once the second formal application round has been completed.

[37] NPRM Paragraph 15.

XIX. Spectral Emission Masking and Bandwidth Limits: It would appear that somewhat tighter spectral emission masks and bandwidth limits than otherwise normal would greatly reduce the possibility of interference.[38]

However, we are loath to impose such additional restrictions on LPFM stations unless absolutely necessary. Our optimal solution would be to propose that such restrictions not be placed on LPFM licensees initially.

We have proposed, above, that Local Self-Regulating Organizations (LSROs) be the first forum to handle interference issues. We suggest that tighter spectral masks and bandwidth limitations be among the primary tools an LSRO can utilize to resolve interference issues. A solution that is tailored to fit each situation is preferable to a "one size fits all" rule from Washington that applies to the whole country. We would prefer such a solution if it is technically feasible and not excessively costly.

However, the loss of subcarriers and stereo capability or a minimal reduction in audio quality is a small price to pay for the ability to broadcast at all. Therefore, especially in dense population areas, we would support the use of tightened spectral masking and reduced bandwidth as means for resolving conflicts and allowing more LPFM stations to be on the air.

XX. Other Public Interest, Service, and Political Programming Rules:

We agree with the Commission's proposals that additional "public interest" and service rules, as outlined in Paragraphs 70-73 should not be applied to LPFM stations with a 100 watt maximum.

We also agree that the political programming rules mentioned in Paragraph 75 would appear to be statutorily mandated. In addition, we believe that, in practice, they will rarely apply to LPFM stations. When they do, their application would appear to be largely unobjectionable.

XXI. Operating Hours:

We agree with the Commission's view that no specific operating hours be required of 100 watt or less LPFM stations. However, our reasoning is somewhat different than the Commission's. We have urged previously in these comments that the Commission emphasize local self-regulation as the first and primary method of regulating LPFM and resolving any disputes. As such, we envision negotiated or mediated time-sharing arrangements as a significant component in LPFM operation and regulation. Therefore, we assume, that many LPFM stations, especially in congested areas, will be part of a time-sharing arrangement and will not broadcast full time.

Of course, the Commission also states[39] that should the situation develop where stations are "wasting" spectrum by controlling it, but not utilizing it, and preventing others from utilizing

[38] NPRM Paragraphs 51-56.

[39] NPRM Paragraph 77.

it, then this issue could be revisited. We agree with that position, but emphasize that with an encouragement of local self-regulation and flexible time-sharing arrangements, such a situation should never occur.

XXII. Construction Periods:

We suggest somewhat shorter construction periods than the FCC's proposals: for LPFM-100 stations 10 months, and for "microradio" (1-10 watts) 9 months. These stations should be fairly inexpensive and relatively easy technically to put on the air. We do not believe that people should be allowed to tie up unused spectrum indefinitely if they are unprepared to begin operations. A 10 months for LPFM-100 stations and 9 months for "microradio" stations should be more than enough time. Of course, as the Commission states,[40] extensions could be granted if the reason for delay were beyond the applicant's control.

Respectfully submitted by,

Philip Tymon
Committee On Democratic Communications
National Lawyers Guild
558 Capp Street, San Francisco, CA 94110
(415) 522-9814

On Behalf Of:

(Signatories)

(Appended Statements of Signatories)

[40] NPRM Paragraph 81.

Before the Federal Communications Commission, Washington, D.C. 20554

In the Matter of	)	**MM Docket No. 99-25**
	)	**RM-9208**
Creation of a Low	)	**RM-9242**
Power Radio Service	)	

DRAFT

Comments of Solveig Singleton
Director of Information Studies
Cato Institute

June 21, 1999

Founded in 1977, the Cato Institute is a public policy research foundation dedicated to considering policy options consistent with the traditional American principles of limited government, individual liberty, and peace. The Institute is a nonprofit educational foundation. Solveig Singleton, a telecommunications lawyer, is the director of information studies at the Cato Institute.

Part I of these comments concerns the Commission's proposed approach to "creating" a low power radio service. Part II describes alternative approaches to the problems of low power radio, including a forbearance model and an entry barrier model.

The approach to low power radio reflected in the FCC's Notice of Proposed skirts the hard issue of current "pirates." Low power radio does not need to be "created"--it exists. A new framework for low power radio should not be a pretext for squeezing out those already providing the diverse services praised in the NPRM.

The NPRM is also disturbingly ambitious in its regulatory agenda. The proposed top-down approach is doomed to run headlong into the cultural realities of low-power radio, the communities it serves, and the bottom-up power of technology to route around ambitious regulatory plans.

Thus these comments support an inquiry into approaches to low-power that better accommodate existing low power operators and do not overburden the FCC's enforcement apparatus. The FCC should consider whether it has the authority to forbear from bringing enforcement actions against low power operators that do not cause interference problems. Second, the FCC should consider the current wattage limitations as an entry barrier. The FCC must also consider its power to adopt such alternative models (current statutory forbearance and entry barriers models apply to telecommunications services, not to broadcasters).

Part I: "Creating" Low Power Radio

The "Creation of a Low Power Radio Service" NPRM appears to support the "creation" of a service which, in fact, already exists here and in other countries, and which legally existed before the FCC ceased granting Class D licenses around 1980. The NPRM's near-total disregard of this reality leads to several problems. Without a serious inquiry into the nature of current low power radio operations here and in other countries, or the experience with Class D licenses before 1980, the FCC will be missing valuable practical information.

The NPRM barely mentions existing low power broadcasters, aside from implying that anyone operating as a "pirate" after being ordered by the Commission to stop would lack the "character" to become a licensee under the new system. Together, with the proposal to license 1000-Watt stations as a primary service and give less favored status to those of lesser power (that is, existing microradio outlets) suggests that the FCC's plan would simply supply a pretext for wiping out existing operators. Ironically, the existing pirates are already providing precisely the kind of diversity that the proposal is intended to support.

A crack-down on existing operators raises troubling free speech issues. The illegal radio operators' role is eerily analogous to the Puritans' under King Henry VIII's system for licensing the press (the Puritans moved a secret press around England to produce religious tracts from 1588 to 1589).[1] Some courts have rejected pirates' first amendment arguments. The FCC will find little comfort in this. Many pirates are local celebrities. The public is unlikely to take kindly to more SWAT teams training machine

[1] Jonathan W. Emord, Freedom, Technology and the First Amendment (San Francisco, California: Pacific Research Institute for Public Policy, 1991) p. 27.

guns on radio operators, their families and pets. Rather than asking whether to deign to permit the more stubborn current operators to continue, the NPRM might question the wisdom of broadly exercising the FCC's authority to stop them, especially when their operation has resulted in no actual injury, and especially by such brutal means.

Also, the NPRM suggests few exemptions for low-power operators from existing regulations, including political broadcasting rules, time limits, character review, and new consolidation limits (stricter than those authorized by statute), new restrictions on the power to trade and transfer licenses, and presumably indecency rules as well. Enforcement of those new rules against dozens of new 10 or 100 watt micro-stations would overtax the FCC's existing regulatory apparatus, and create entry barriers where the object is to lower them.

Low-power radio, partly because it has been illegal, but *partly by its very nature* (as before it was made illegal), has best served isolated, dissident, unique, or minority communities. The voices heard over low-power radio will not always be those of polite churches, elementary schools, and traffic reporters. Low-power radio is often anti-authoritarian, anti-majoritarian, controversial. It is amateur--not legalistic. It is not mainstream.

Many of those with experience in low-power radio would comply with a top-down regulatory model only if dragged to it kicking and screaming. If the FCC's model won't accommodate true diversity, illegal stations will continue to spring up. Unless the FCC's plans for low-power radio embrace the uncouth, the amateur, and the bizarre along with the gentle, *as well as* the implications of low-cost technology, the FCC is doomed to

send out more SWAT teams--and end up with more bland radio. The enforcers will win some battles, but lose the war. This is no longer a top-down world.

Part II: Alternative Approaches to Low Power Radio

From a policy standpoint, the FCC's best path to low-power radio is a bottom-up approach that recognizes economic, cultural and technological forces for what they are. Such options include forbearing (if permitted by statute) from bringing enforcement actions in certain circumstances, and/or assessing the authorization of low power radio was an entry barrier issue.

A. Forbearance

The FCC's practice with respect to low-power stations seems to be to bring enforcement actions only sometimes, such as when there are actual (or strongly alleged) problems with interference. A large number of unlicensed stations operate unmolested. The easiest approach to "authorizing" low-power radio is to clarify this policy and make it more concrete.

Does the FCC have the authority to do this? On one hand, this restraint would be less ambitious than its current NPRM. The provisions describing the FCC's enforcement powers do not *require* it to bring an action. But whether the FCC's authority under Section 157 could include the authority to make official an existing and legal policy of prosecutorial discretion has not yet been decided.

In addition, Congress might consider giving the FCC more explicit forbearance authority for broadcasters (existing forbearance rules apply only to telecommunications services). In a world where broadcasters of low and high power increasingly compete

with and commingle with other media such as the Internet, the relevance of a substantial part of current broadcast regulation (such as ownership rules, political broadcasting rules, public interest requirements) is thrown into doubt.

B. Entry Barriers

A supplemental approach to authorizing low power radio is to view wattage restrictions as entry barriers. The key to such an approach would be to lower entry barriers--without creating new ones.

Claims of interference (general or specific) bear close examination as entry barriers. Such claims may be merely a pretext for closing down competition. In the 1920s, dominant broadcasters exaggerated problems of interference in order to squeeze out smaller competitors; the claim that licensing was required to halt "chaos" is a myth.[2] There is evidence that claims of "interference" by pirate broadcasters today have similarly become a pretext for closing out competition.[3] Obviously, it is not the function of the FCC to permit its regulatory apparatus to be manipulated in this way.

Note again that the FCC's authority to approach this issue as an "entry barrier" or as an opportunity for "forbearance" must come from its authority under Section 157. The Telecommunication's Act's explicit "forbearance" and "entry barrier" provisions are for telecommunications services, not broadcasters.

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[2] Thomas W. Hazlett, "The Rationality of U.S. Regulation of the Broadcast Spectrum," 33 *J. Law & Econ.* 133 (April, 1990).

[3] Jesse Walker, "Don't Touch That Dial: U.S. v. Stephen Paul Dunifer," *Reason*, October, 1995, p. 30.